



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 549

IN THE MATTER OF THE CHOATE GROUP

DISPOSITION AGREEMENT

This Disposition Agreement (“Agreement”) is entered into between the State Ethics Commission (“Commission”) and The Choate Group pursuant to Section 5 of the Commission’s Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On March 22, 1996, the Commission voted to find reasonable cause to believe that The Choate Group violated G.L. c. 268A, §3(a). The Commission and The Choate Group now agree to the following findings of fact and conclusions of law:

1. The Choate Group is a private business retained by other entities and businesses to lobby the Legislature. During 1990-1992, The Choate Group lobbied the Legislature on behalf of various business clients.
2. During 1990-1992, Edward E. O’Sullivan (“O’Sullivan”) was an employee of and lobbyist for The Choate Group. O’Sullivan was also The Choate Group’s vice-president. As part of his duties, O’Sullivan was to track, monitor and oppose, promote or otherwise seek to influence legislation on behalf of The Choate Group.
3. Charles F. Flaherty, Jr. (“Flaherty”) has served in the House of Representatives (“House”) of the Massachusetts State Legislature (“Legislature”) from January 1965 to the present. During that time, Flaherty served as the chairman of the Committee on Counties (1971-1982); chairman of the Committee on Taxation (1983); and Majority Leader (1985-1990). In 1991, Flaherty was elected Speaker of the House and he is currently serving his third term in that office.
4. As a state representative and as Speaker, Flaherty participates, by speech and debate, by voting and by other means, in the process by which laws are enacted in the Commonwealth. As Speaker, Flaherty presides over the House, manages and administers the business organization of the House and recommends to the Democratic caucus for their ratification all majority party leadership and committee assignments. Thus, as Speaker, Flaherty has and exercises considerable influence and control over the House, both as to legislative and administrative matters.
5. During 1990, 1991 and 1992, O’Sullivan participated along with others not associated with The Choate Group in organizing multiple day July 4th holiday events for Flaherty and others in Kennebunkport, Maine. The Choate Group paid a portion of the expenses of each of these events.
6. Approximately 18 to 25 people attended each of these July 4th holidays at Kennebunkport. The majority of these people knew each other and were close friends of Flaherty, including Massachusetts lobbyists and legislators.
7. The funds from The Choate Group were used to pay for boat rentals, clambakes and other meals and entertainment for some of the guests.
8. Flaherty has acknowledged the total value of his share of the Kennebunkport July 4th expenditures for 1990, 1991 and 1992 combined was at least \$2,000.^{1/}

9. It is unclear as to how much of this \$2,000 in gratuities came to Flaherty from The Choate Group through O'Sullivan as opposed to from other sources. The Choate Group acknowledges, however, that its employee O'Sullivan provided at least \$50 of the gratuities that went to Flaherty in each of the three years of the Kennebunkport July 4th holidays.

10. Section 3(a) of G.L. c. 268A, the conflict of interest law, prohibits anyone from giving to a state employee, directly or indirectly, anything of substantial value for or because of an official act performed or to be performed by the state employee.

11. Massachusetts legislators are state employees.

12. Anything worth \$50 or more is of substantial value for G.L. c. 268A, §3 purposes.^{2/}

13. As a business organization, The Choate Group acts through and is responsible for the conduct of its employees, officers and agent.

14. There is evidence to indicate that The Choate Group had instructed O'Sullivan to not spend more than \$50 in entertaining any Massachusetts public official prior to these Kennebunkport events.

15. By, in 1990, 1991 and 1992, giving Flaherty gratuities valued at \$50 or more, while Flaherty was, recently had been, or soon would be in a position to take official actions on matters affecting the interests of The Choate Group or its clients, O'Sullivan gave items of substantial value to Flaherty for or because of official acts performed or to be performed by Flaherty. Because it is responsible for the conduct of its legislative agent O'Sullivan, The Choate Group violated G.L. c. 268A, §3(a).^{3/ 4/}

16. The Commission is aware of no evidence that The Choate Group sought or requested Flaherty to take any official action concerning any proposed legislation in return for the gratuities as described above.^{5/} However, even if the gratuities were intended only to foster official goodwill and access, they were still impermissible.^{6/}

In view of the foregoing violations of G.L. c. 268A, the Commission has determined that the public interest would best be served by the disposition of this matter without further enforcement proceedings on the basis of the following terms and conditions agreed to by The Choate Group:

(1) that The Choate Group pay to the Commission the total sum of \$3,000 for violating G.L. c. 268A, §3(a), and

(2) that The Choate Group waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement and in any related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: March 28, 1996

^{1/} July, 1990, \$500; July, 1991 \$800; and July, 1992, \$700.

^{2/} See *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); EC-COI-93-14.

^{3/} In determining whether the items of substantial value have been given for or because of official acts or for acts within one's official responsibility, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. As the Commission explained in *Commission Advisory No. 8: Free Passes* (issued May 14, 1985):

Even in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, §3 may apply. Thus, where there is no prior social or business relationship between the giver and the recipient, and the recipient is a public official who is in a position to use [his] authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. In such a case, the gratuity is given for his yet unidentifiable "acts to be performed."

^{4/} The Choate Group is responsible for its employee's actions even if they violated company policy. See, e.g., *In re Ackerley Communications, Inc.*, 1991 SEC 518.

^{5/} As discussed in footnote 3, §3 of G.L. c. 268A, is violated even where there is no evidence of an understanding that the gratuity is being given

in exchange for a specific act performed or to be performed. Indeed, any such *quid pro quo* understanding would raise extremely serious concerns under the bribery section of the conflict of interest law, G.L. c. 268A, §2. Section 2 is not applicable in this case, however, as there was no evidence of such a *quid pro quo* between The Choate Group's employee and Flaherty.

^{6/} Section 3 applies to generalized goodwill-engendering entertainment of legislators by private parties, even where no specific legislation is discussed. *In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609 (company representing distributors violates §3 by providing a free days's outing (a barbecue lunch, golf or tennis, a cocktail hour and a clam bake dinner), worth over \$100 per person, to over 50 legislators, their staffers and family members, with the intent of enhancing the distributors' image with the Legislature and where the legislators were in a position to benefit the distributors). This rule of law was clearly stated in Flaherty's 1990 Disposition Agreement with the Commission. *In re Flaherty*, 1991 SEC 498.